

**PROPOSED ORDINANCE
TELECOMMUNICATIONS FRANCHISE REGULATORY CODE
CITY OF ST. PETERS, MISSOURI**

Prepared by:

CURTIS, OETTING, HEINZ,
GARRETT & SOULE, P.C.
130 S. Bemiston, Suite 200
Clayton, Missouri 63105
(314) 725-8788
(314) 725-8789 (FAX)

July 11, 1995

under this Chapter or a Franchise Agreement, whether arising before or after the date of the Franchise Transfer.

(g) *Filing Fees and Deposits.*

To be acceptable for filing, an application under this Section 25.8-4 submitted after the effective date of this Chapter shall be accompanied by a filing fee in the following amounts to cover the City's internal costs:

- (1) For an initial Franchise or Franchise renewal:
\$1,000.00
- (2) For modification of a Franchise Agreement \$500.00
- (3) For approval of a Franchise Transfer \$500.00

In addition, the Board of Aldermen may require the applicant, or, where applicable, a transferee, to reimburse the City for its reasonable out-of-pocket expenses in considering an application, including consultants' fees and election expense.

(h) *Intergovernmental Cooperation.*

At the election of the Board of Aldermen any part or all of the process established by this Section 25.8-4 may be conducted in concert with other political subdivisions served or to be served by the applicant, under such procedures as the Board of Aldermen may establish.

Sec. 25.8-5. Construction Provisions:

(a) *Construction Procedures.*

(1) A Franchisee shall construct, operate and maintain Telecommunications Transmission and Distribution Facilities subject to the supervision of all of the authorities of the City who have jurisdiction in such matters, and in strict compliance with all applicable laws, ordinances, departmental rules and regulations.

(2) Telecommunications Transmission and Distribution Facilities shall be subject to periodic inspection by the City.

(3) Any Person desiring to conduct Telecommunications Transmission and Distribution Facilities Work in, along, across, under, or over Public Rights-of-Way must first apply for and obtain a Telecommunications Transmission and Distribution Facilities Work Permit, in addition to any other building permit, license, easement, Franchise, or authorization required by law.

(4) All applications for Telecommunications Transmission and Distribution Facilities Work Permits shall be submitted to the City Engineer. The City Engineer shall design and make available forms for such applications, requiring such information as the City Engineer determines in his or her discretion to be necessary, consistent with the provisions of this Chapter, to accomplish the purposes of this Chapter. Each such application shall be accompanied by payment of an user fee in the amount of \$25.00 ("Base Fee") plus \$10.00 per 300 feet of right-of-way involved and an additional \$10.00 per road crossing to cover the cost of processing the application ("Variable Fee").

(5) In order to reduce the number of interruptions of the Public Rights of Way in the future, in the course of any Telecommunications Transmission and Distribution Facilities Work involving the installation of Telecommunications Transmission and Distribution Facilities, whether pursuant to new construction, relocation, repair, replacement, substitution, upgrading or otherwise, the Franchisee shall install and dedicate to the City either a state of the art telecommunications compatible conduit at least one and one fourth inches in diameter or at least four optic fibers, at the City's option, along the entire length of the Telecommunications Transmission and Distribution Facilities installed by the Franchisee under the Permit. The conduit or fibers so installed and dedicated may be used by the City for whatever purposes it may deem appropriate, including rental to the Franchisee or other applicants or Franchisee for use of the Public Rights-of-Way. The Franchisee may deduct the actual documented incremental costs of the installation of the additional conduit or fibers first from the Variable Fee and then from Franchisee Fees owed to the City, so long as such costs are not passed through to ratepayers. The Franchisee shall provide the City with the computation of said costs with any payment of Fees which includes an off-set therefor. The Franchisee shall provide the City with the precise location of said dedicated conduit or fibers so that it may utilize it in the future. The Franchisee shall permit access thereto upon request by the City.

(6) The City Engineer shall review each application for a Telecommunications Transmission and Distribution Facilities Work Permit and, upon determining that the applicant has all requisite authority to perform the desired Telecommunications Transmission and Distribution Facilities Work and that the applicant has submitted all necessary information and has paid the user fee, shall issue the Telecommunications Transmission and Distribution Work Permit, except as provided in subsection (7) hereof. In order to avoid excessive processing and accounting costs to either the City or the Franchisee, the City Engineer shall have authority to establish procedures for bulk processing of applications and periodic payment of fees in situations involving Franchisees that have numerous applications.

ORDINANCE 960656

Enacting a new chapter 25, Code of Ordinances, entitled "Communications Transmission Systems" to establish the conditions under which persons may operate wired communications systems and open video systems using public rights of way and other public property.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. There is enacted a new chapter 25, Code of Ordinances, entitled "Communications Transmission Systems" to read as follows:

CHAPTER 25 COMMUNICATIONS TRANSMISSION SYSTEMS

ARTICLE I. GENERAL PROVISIONS

- § 25-10. Short title.
- § 25-11. Purpose.
- § 25-12. Scope.
 - (a) Included activity.
 - (b) Excluded activity.
 - (1) Cable television operators.
 - (2) The city.
 - (3) Excluded by other law.
- § 25-13. Definitions.
- § 25-14. Current operators and infrastructure providers.
 - (a) Franchise required.
 - (b) Application of chapter.
 - (c) Termination of authority.
- § 25-15. Franchise and license nonexclusive.
- § 25-16. Time is of the essence.
- § 25-17. Filing communications with regulatory agencies.
- § 25-18. Access to records.
- § 25-19. Equal Employment Opportunities.
 - (a) Notification to the city.
 - (b) Compliance with local, state and federal laws.
- § 25-20. Nonenforcement by City.
- § 25-21. Identification of contractors, subcontractors and users.
 - (a) Contractors and subcontractors.
 - (b) Lessees and other users.
- § 25-22. Severability.
- § 25-23. Titles.
- § 25-24. Conflicting provisions.
- Secs. 25-25--25-29. Reserved.

Sec. 25-65. Coordination of construction activities.

For the protection of the public's safety and investment in its streets and other public rights of way, all persons occupying the public rights of way shall cooperate with the City and each other in planning, constructing and maintaining a system. By January 1 of each year, every occupant of the public rights of way shall provide the City with a schedule of their proposed construction activities that may affect the public rights of way for that year. Each occupant of the public rights of way shall meet with the City at least annually, or more often if required by the City, for the protection of the public's safety and investment in its streets and other public rights of way in an attempt to coordinate construction in the public rights of way. Such meeting may include some or all other occupants of the right of way or other public property. Construction shall be scheduled and coordinated to minimize public inconvenience, disruption and damage to the public rights of way.

Secs. 25-66--25-70. Reserved

DIVISION 3. ACCESS BY THE CITY

Sec. 25-71. Access to system by the City.

As part of the total compensation paid to the City for the right of an operator to occupy public property and conduct its business, the City shall require as part of a franchise or license agreement access to the system for transmission of video, audio, data or other signals. It is understood that an operator's system may include discontinuous links, and that the City may postpone access. The City may interconnect other systems, including its own, using appropriate technology that will not impair the operators' systems.

Sec. 25-72. Scope of access to the operator's or infrastructure provider's system.

Except for space available on the operator's system, an operator or infrastructure provider, unless otherwise required by a separate franchise or license agreement, shall not be required to supply the equipment necessary for the system to be utilized by the City. If access is required, the operator will provide to the City access to the system which shall be of the highest technical quality provided by the operator or infrastructure provider to other users, including the operator.

Sec. 25-73. Indemnification.

(a) *City obligation.* The City shall indemnify, defend and forever hold harmless an operator, its officers, employees, agents, licensees and affiliates from and against any and all claims, judgments, costs, liabilities, damages, and expenses (including reasonable attorney's fees) arising out of or in connection with the use of the facilities provided to the City by an operator.

(b) *Operator's negligence or willful misconduct.* Notwithstanding anything to the contrary contained in this section, an operator shall not be so indemnified or reimbursed in relation to any

PRELIMINARY DRAFT

CITY OF KIRKSVILLE PUBLIC RIGHT-OF-WAY MANAGEMENT ORDINANCE

AN ORDINANCE OF THE CITY OF KIRKSVILLE, MISSOURI, GRANTING AND REGULATING THE USE OF PUBLIC RIGHT-OF-WAY FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING, AND OPERATING INFRASTRUCTURE SYSTEMS IN, UNDER AND ACROSS CERTAIN STREETS AND PUBLIC RIGHT-OF-WAY IN THE CITY OF KIRKSVILLE, MISSOURI.

WHEREAS, utility providers, telecommunication providers and others (hereinafter public right-of-way "Users") desire use of certain public right-of way within the City of Kirksville (hereinafter referred to as the "City") for the purpose of conducting business and constructing, maintaining and operating infrastructure systems and other uses pursuant to the provisions of the laws of the State of Missouri; and

WHEREAS, the use of the City's streets and public right-of -way should be conducted and managed in a manner that is consistent with sound real estate management principles, the maintenance of public safety, proper traffic control and responsible stewardship of municipally-owned infrastructure; and

WHEREAS, it is in the public's interest to set forth the rights and obligations of Providers using public right-of way in order to promote public safety and provide for compensation to the city for its expenditures made to manage and maintain public right-of-way resources for use by utility providers and others;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KIRKSVILLE, MISSOURI:

SECTION 1: INTRODUCTION

This ordinance shall be known as and may be cited as the "City of Kirksville Public Right-of-Way Management Ordinance". In addition to the provisions set forth herein, public right-of-way

(f) In the event that the permittee fails to backfill, repair or repave any cuts or excavations made in city streets the city shall, at its option, repair said cut with city forces or contract the repair to be made, and charge the permittee for the full contract cost of repair. If the City makes the repair with City forces the charges shall be based on the unit price paid on the most recent Street Improvement or Pavement Repair Contract issued by the City Engineer.

SECTION 7: WORK BY OTHERS, CONSTRUCTION BY ABUTTING OWNERS, ALTERATIONS TO CONFORM WITH PUBLIC IMPROVEMENTS

(a) The City reserves the right to lay, and permit to be laid, sewer, gas, water and other pipe lines or cables and conduits, as well as drainage pipes and channels and streets and to do and permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper in, across, over or under any street, alley, highway, public place occupied by user, and to change any curb or sidewalk or the grade of any street and to maintain all City of Kirksville facilities. In permitting such work to be done, the City shall not be liable to user for the costs of utility relocation or for any other damage, nor shall the City be liable to user for any damages arising out of the performance by the City or its contractors or subcontractors, not willfully and unnecessarily occasioned. However, nothing herein shall relieve any other person or corporation from liability for damage to facilities or system of user. The City shall not be liable for any damage to user's property or for any direct or consequential damage to user or its customers that may arise if the City, its agents, employees or contractors negligently cause the flow of data or light impulses through said lines to be interrupted or stopped, provided that nothing herein shall relieve any third party responsibility for damages caused to user by such third party.

(b) Whenever, by reason of changes in the grade or widening of a street or in the location or manner of constructing a water pipe, gas pipe, drainage channel, sewer, or other city-owned underground or above ground structure it is deemed necessary by the City to move, alter, change, adapt, or conform the underground or above ground facilities of user, user shall make the alterations or changes, on alternative right-of-way provided by the City, if available, as soon as practicable after being so ordered in writing by the City without claim for reimbursement or damages against the City.

(c) If the City requires user to adapt or conform its facilities, or in any way or manner to alter, relocate or change its property to enable any other corporation or person except the City, to use, or to use with greater convenience, any right-of-way, street, alley, highway or public place, user shall not be required to make any such changes until such other corporation or person shall have undertaken, with solvent bond, to reimburse user

COUNCIL BILL NO. 97-060

ORDINANCE NO.

AN ORDINANCE amending the Joplin City Code by enacting Appendix 29-C, Telecommunications Regulations, enacting uniform regulations for the Telecommunications Industry.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, AS FOLLOWS:

That the Joplin City Code be amended by enacting Appendix 29-C, Telecommunications Regulations, to read as follows:

APPENDIX 29-C, TELECOMMUNICATIONS REGULATIONS

SECTION 1. - INTENT AND SCOPE OF ORDINANCE

A. Intent.

1. The procedures set forth by this Ordinance for granting Permits and Licenses for the construction and operation of Telecommunication Systems or Open Video Systems in the City promote the public interest, balance the health, safety and welfare of the public and stimulate commerce by ensuring that Telecommunications Systems and Open Video Systems are responsive to the needs and interests of the City and its residents and there is an orderly process for the granting or renewing of Permits and Licenses and overseeing the development and provision of services provided pursuant to Permits and Licenses.

2. This Ordinance is adopted pursuant to the City's power to provide for the public health, safety, welfare, and convenience and pursuant to its power to manage the Rights-of-Way and receive reasonable, nondiscriminatory compensation for the use of Rights-of-Way by telecommunications providers, as expressly set forth by Sections 253 and 653 of the Telecommunications Act of 1996 ("Act") [P.L. No. 104-104].

Consistent with the Act, the City's regulation of the use of Rights-of-Way will not have the effect of prohibiting the provision of telecommunication services.

B. Scope of Ordinance. This Ordinance shall provide the basic local regulatory scheme for providers of telecommunications services, including providers of only the physical plant necessary to operate a communications system, unless otherwise expressly excluded. This Ordinance shall

SECTION 14. - OVERSIGHT AND REGULATION

A. The City shall have the right to oversee, regulate and inspect periodically the construction, maintenance, operation and upgrade of the System, and any part thereof. Permittee or Licensee shall establish and maintain managerial and operational records, standards, procedures and controls to enable Permittee or Licensee to prove, in reasonable detail, to the satisfaction of the City at all times throughout the term of the Permit or License, that Permittee or Licensee is in compliance with the Permit or License. Permittee or Licensee shall retain such records for not less than ten (10) years following their creation, and for such additional period as the City may direct.

B. A Permittee or Licensee shall at all times maintain on file with the City, a full and complete set of plans, records and "of record" maps of all existing and proposed installations and the types of equipment and facilities installed or constructed, properly identified and described as to the types of equipment and facility by appropriate symbols and codes which shall include annotations of all Rights-of-Ways where work will be undertaken. Maps shall be drawn to scale.

C. Upon forty-eight (48) hours' written notice, and during normal business hours, a Permittee or Licensee shall permit examination by any duly authorized representative of the City, of all Permit or License Property, together with any appurtenant property and facilities of a Permittee or Licensee situated within or without the City, and all records relating to the Permit or License, provided they are necessary to enable the City to carry out its regulatory responsibilities under federal, state and local law, or a Permit or License. Such records include: all books, records, maps, plans, financial statements, service complaints, performance test results, records of request for service, and other like materials of a Permit or License. A Permittee or Licensee shall have the right to be present at any such examination.

D. If any records described in the previous subsection are proprietary in nature or must be kept confidential by federal, state or local law, upon proper request by a Permittee or Licensee such information obtained during such an inspection shall be treated as confidential, making it available only to those Persons who must have access to perform their duties on behalf of the City, including but not limited to the Division of Finance, and the Law Department.

E. Copies of all petitions, applications, communications and reports submitted by a Permittee or Licensee on behalf of, or relating to a Permittee or Licensee, to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction with respect to any matters affecting a Permitted or Licensed Telecommunications System or Open Video System shall be made available to the City upon request. Copies of responses from such regulatory agencies to a Permittee or Licensee shall likewise be furnished to the City upon request.

ORDINANCE NO. _____

**THE CITY COUNCIL OF THE CITY OF
SPRINGFIELD DOES ORDAIN AS FOLLOWS:**

The following Ordinance is added to the City of Springfield Code:

ORDINANCE _____ TELECOMMUNICATIONS ORDINANCE

**SECTION 1 -- DECLARATION OF FINDINGS AND INTENT;
SCOPE OF ORDINANCE**

1.1 Declaration of Finding and Intent.

1.1.1 The City of Springfield ("Springfield") finds that the public streets, alleys, easements and other Rights-of-Way within Springfield:

(a) are critical to the travel and transport of persons and property in the business and social life of Springfield;

(b) are intended for public uses and must be managed and controlled consistent with that intent;

(c) can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit, to the enhancement of the health, welfare, and general economic well-being of Springfield and its citizens; and

(d) are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects upon the public from such facilities' construction, placement, relocation, and maintenance in the Rights-of-Way;

(e) are an asset of the City of Springfield that taxpayers spent in the past fiscal year alone \$2.4 Million Dollars to acquire, and in excess of \$10 Million Dollars to improve.

1.1.2 Springfield finds that the right to occupy portions of the Rights-of-Way for limited times for the business of providing telecommunications services or open video services is a valuable economic right to use a unique public resource that has been acquired and is maintained at great expense to Springfield and its taxpayers, and the economic benefit of such rights should be shared with all the taxpayers of Springfield.

of all Rights-of-Ways where work will be undertaken. Maps shall be drawn to scale. The electronic format to be submitted shall be to State plane coordinates using 1983 datum in one of the following formats: (1) arch/info export file; (2) arch/info coverage file; (3) AutoCAD drawing file; or (4) a dxf. file. The Director of Public Works may specify a different electronic format as needed for the Department of Public Works to evaluate and maintain an adequate data base of infrastructure information in his sole discretion.

(b) If requested by Springfield, a summary of service calls, identifying the number, general nature and disposition of such calls, on a monthly basis. A summary of such service calls shall be submitted to Springfield within thirty (30) days following its request in a form reasonably acceptable to Springfield.

(c) Throughout the Term, an Operator, Licensee or Franchisee shall maintain complete and accurate books of account and records of the business, ownership, and operations of an Operator, Licensee or Franchisee with respect to the System in a manner that allows Springfield at all times to determine whether an Operator, Licensee or Franchisee is in compliance with the Franchise or License. Should Springfield reasonably determine that the records are not being maintained in such a manner, an Operator, Licensee or Franchisee shall alter the manner in which the books and/or records are maintained so that an Operator, Licensee or Franchisee comes into compliance with this Section. All financial books and records which are maintained in accordance with the regulations of the FCC and any governmental entity that regulates utilities in the State of Missouri, and generally accepted accounting principles shall be deemed to be acceptable under this Section. An Operator, Licensee or Franchisee shall also maintain and provide such additional books and records as Springfield deems reasonably necessary to ensure proper accounting of all payments due Springfield.

8.4 Reports.

8.4.1 Status Reports. An Operator, Licensee or Franchisee shall submit to Springfield reports describing, in detail, the status of the construction of the Initial System every six (6) months until its substantial completion. An Operator, Licensee or Franchisee shall, upon substantial completion of the Initial System, notify Springfield in writing. If the scope of the Initial System is expanded, an Operator, Licensee or Franchisee shall likewise report every 6 (six) months on the state of continuation of expansion.

8.4.2 Financial Reports. An Operator, Licensee or Franchisee shall submit to Springfield not later than three (3) months after the end of each annual fiscal period, a copy of an Operator's annual financial statements for such period which statements shall be signed by the Chief Financial Officer of an Operator, Licensee or Franchisee provided, however, that Springfield may also require such statements to be audited and certified by an independent certified public accountant in accordance with generally accepted accounting principles. Such statements shall be accurate and complete.

8.4.3 Additional Information and Reports. An Operator, Licensee or Franchisee shall provide annually to the department designated by Springfield a list of any and all material communications, public reports, petitions or other filings, either received from or submitted to any municipal, county, state or federal agency or official (and any response thereto submitted by or received by an Operator, Licensee or Franchisee), which in any way materially affects the operation of the System or any Service or an Operator, Licensee or Franchisee's representations and warranties set forth herein, but not including tax returns or other filings which are confidential. Upon the request of Springfield, an Operator, Licensee or Franchisee shall promptly, but in no case later than ten (10) business days following the request, deliver to Springfield a complete copy of any item on said list. Upon the request of Springfield, an Operator, Licensee or Franchisee shall promptly submit to Springfield any information or report reasonably related to an Operator, Licensee or Franchisee's obligations under the Franchise, its business and operations, or those of any Affiliated Person, with respect to the System or its operation, or any Service distributed over the System, in such form and containing such information as Springfield shall specify. Such information or report shall be accurate and complete.

8.5 Confidentiality. If the information required to be submitted in an Annual Report is proprietary in nature or must be kept confidential by federal, state or local law, upon proper request by an Operator, Licensee or Franchisee such information shall be treated as confidential, making it available only to those Persons who must have access to perform their duties on behalf of Springfield, including but not limited to the Department of Finance, the Office of the City Attorney and the Mayor and Council Members, provided that an Operator, Licensee or Franchisee notifies Springfield of, and clearly labels the information which an Operator, Licensee or Franchisee deems to be confidential, proprietary information. Such notification and labeling shall be the sole responsibility of Franchisee. To the extent the Government Records Management Access Act ("GRMAA") or any other federal requirement for privacy applies to the information to be submitted, such law shall control.

8.6 Operator, Licensee or Franchisee's Expense. All reports and records required under this Ordinance shall be furnished at the sole expense of an Operator, Licensee, Franchisee, except as otherwise provided in this Ordinance or a Franchise.

8.7 Right of Inspection. Springfield's designated representatives shall have the right to inspect, examine or audit during normal business hours and upon reasonable notice to an Operator, Licensee or Franchisee under the circumstances, all documents, records or other information which pertain to an Operator, Licensee or Franchisee or any Affiliated Person with respect to the System, its operation, its employment and purchasing practices, Services distributed over the System, and with respect to an Operator, Licensee or Franchisee's obligations pursuant to the Franchise. All such documents shall be made available within Springfield or in such other place that Springfield may agree upon in writing in order to facilitate said inspection, examination, or audit, provided, however, that if such documents are located outside of Springfield, then an

CU restraining trade,

A St. Louis company says the utility is delaying its request to string a fiber network.

By Deborah Barnes
News-Reader

A St. Louis company, hoping to compete with Southwestern Bell for local telephone customers, says City Utilities is stalling its efforts to enter the Springfield market.

Brooks Fiber Properties wants to build a 16-mile, center-city fiber network to provide local telephone service.

But so far, it has been unable to reach an agreement with City Utilities to string the fiber from utility

poles.

That prompted Brooks Fiber Vice President John Shapleigh to write a letter to CU General Manager Robert Roundtree on Dec. 19 accusing the utility of unfairly restraining trade. The letter also posed what Roundtree described as "a veiled threat of legal action."

Shapleigh's letter notes that CU plans to lease excess capacity on its own 135-mile fiber optics network to telecommunications providers — a move approved by the City Council

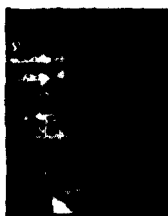
last month to promote competition in a monopoly-dominated industry.

That puts CU in the position of being both a regulator and a competitor. And that concerns Shapleigh as he tries to gain access to the utility's poles.

Shapleigh's letter said CU attorney Andy Dalton and Assistant General Manager Gerald Lee have asked whether Brooks will lease any of the utility's fiber capacity. Such discussions are "wholly inappropriate" as long as CU delays his company's request for space on the poles, he said.

A Dec. 20 response from Roundtree said questions posed by CU workers about whether Brooks will lease capacity on CU's fiber net-

firm alleges



Gannaway



Hacker

work stemmed from initial inquiries from Brooks officials and are not connected to the talks about pole attachments.

CU and Brooks still have many issues to work out, but "there is no interest in denying them a pole attachment," Roundtree said.

"City Utilities is willing to negotiate in good faith to offer a pole attachment agreement to Brooks," Roundtree wrote to Shapleigh.

But City Utility must determine whether there is sufficient capacity on the 562 poles Brooks wants to hook on to, Roundtree's letter said, and that the attachments won't pose a risk to the safety or reliability of others already connected.

Mayor Lee Gannaway and Councilwoman Teri Hacker, both of whom opposed CU's entrance into the telecommunications industry, said they were concerned about Shapleigh's letter. But both said they don't

See FIBER, Page 2B

Fiber / Safety, line placement among issues

Continued from 1B

know what, if anything, they can do about it now.

"I stand by my previous comments on this issue but as a council we've approved it," Hacker said.

CU Board Member Dan Chiles, the leading proponent of utility involvement to ensure fair access to all Springfieldians to the new "information superhighway," said the utility is acting reasonably and is not trying to stonewall Brooks or force it to buy

any of CU's excess fiber capacity.

"The only reason to my knowledge (for the delay) is that there are some serious health and safety reasons about putting these guys on the poles when some of the poles can't support them," Chiles said.

Some of the more than 500 poles Brooks want access to don't have space for the company's lines and would have to be taken out and replaced with taller poles, Chiles said.

Placement of the lines is another

issue. Chiles said Brooks wants the dominant top position on each pole, but Roundtree said as the newest competitor, their lines will be placed at the bottom.

Brooks official Mark Ritter declined to discuss the letter or the company's concerns.

He said Brooks didn't want to air its differences publicly and still hoped to work out an agreement with CU.

Negotiations are continuing.

LELAND L. GANNAWAY

529 W. BATTLEFIELD, SUITE 101
SPRINGFIELD, MISSOURI 65807
TELEPHONE: 417-887-4141
FAX 417-887-4177

April 8, 1997

Honorable Morris Westfall
Senator, State of Missouri
Missouri State Capitol
201 W. Capital Ave., Room 220
Jefferson City, Mo. 65101-1556

Dear Senator Westfall:

As a person who respects and believes in the tried and true system of free enterprise, which has given us the strongest economy of any country in the world and sets us apart from those nations which have permitted, in varying degrees, the involvement of their governments in running businesses, from farming to industry, I trust that you will continue to be supportive of the system which has been so very good to our citizens, fair to our businesses and industries, and healthy for our country.

It is puzzling to me how any part or extension of our government can feel that it is appropriate to enter into competition with existing businesses in its community or with businesses which want to come into and compete in its community in an area of the market place where multiple private companies, but for the threat of competition from the government, want to invest and do business. Unfortunately, this is the climate which has been created in Springfield with our publicly owned utility entering the telecommunications field. It is so very difficult for private companies to maintain an interest in competing with a company which owns the right-of-way in which it must locate the skeleton of its infra-structure and the poles for which it must negotiate "pole attachment agreements". Brooks Fiber, which almost a year ago announced its intention to enter the telecommunications business in Springfield, spent from July, 1996, until mid-February, 1997, trying to get a pole attachment agreement out of City Utilities. Their local representatives were so discouraged by the delay tactics of City Utilities that, had it been left to their decision, they would have given up and left Springfield. Brooks Fiber plans to invest \$20,000,000.00 in Springfield and this investment, although substantially delayed, was almost lost.

The investments which Brooks Fiber and other privately owned companies want

to make in our community will enhance our tax base, which in turn will increase tax revenues to our schools, Art Museum, libraries and all of the functions and services which our government provides to its citizens. On the other hand, City Utilities pays no taxes, but only a percentage of its sales of electricity and gas. Hence, no services to our citizens would be increased by City Utilities' revenue from the leasing of its fiber optics.

It is equally troubling to consider the very unlevel playing field created by City Utilities' entry into this business:

1. Privately owned companies have to make a profit for their investors. City Utilities does not.
2. Privately owned companies have to pay real and personal property taxes. City Utilities does not.
3. Privately owned companies have to pay income taxes. City Utilities does not.
4. Privately owned companies which invest millions of dollars in fiber optic systems and equipment are forced to compete against City Utilities' lessees, which make no investment in the community and only pay rent to City Utilities. These companies can fold their tents and be out of town virtually overnight, if things do not work out as perfectly as they planned.
5. Private companies must compete with a governmental entity which, in part, regulates or controls their business.

Finally, there is the matter of "reputation". As I drove past City Utilities Credit Union yesterday morning and read the message on their marquee, advertising their home equity loans, I wondered to myself just how many more areas of private enterprise that this governmental entity might invade. They are in the child care business (Uptown Kids Childcare Center), the real estate development business (an Industrial Park), the banking business (their credit union), and now the telecommunications business. I am indeed fearful that other cities, competing with us in trying to capture future business

Honorable Morris Westfall
April 8, 1997
Page 3

and industry prospects, may well refer to us as "Springfield, Missouri, where government never hesitates to compete with its own private citizens or its corporate community". You can imagine how such a reputation could have a very chilling effect on our ability to woo new businesses and industry.

Just last week City Utilities adopted a business plan which, they told the public, was limiting their entry into the fiber optics business to four areas, educational, governmental, health care, and their own utility business. However, the fifth area in which they propose to do business is designated "other purposes". When you read the "other purposes" section you will obviously recognize that City Utilities has not limited its intended intrusion into this business at all but in fact has left the door open for it to do whatever it wants to do at any time in the future that it so desires. I have enclosed a copy of the business plan for your review.

If City Utilities is sincere in agreeing to limit its entry into this business to the four areas of governmental, educational, health care and utility, as it so informed the public, then it should have no difficulty in supporting House Bill 620 and it should be encouraging you to do likewise.

I sincerely hope that you will cast your vote for the free enterprise system when you consider House Bill 620. I am confident that the overwhelming majority of the citizens in this part of the State do not want government getting any further into their lives, their pocketbooks, or in competing with their businesses any more than it already has.

Best wishes and thank you for continuing to be a great servant of the people of Southwest Missouri.

Very truly yours,

Leland L. Gannaway

LLG:ln

CU abusing power,

The utility company denies it used inside information to underbid Southwestern Bell.

By Tamiya Kallias
and Ron Sylvester
News-Leader

Mayor Lee Gannaway on Wednesday accused City Utilities of abusing its authority by undercutting Southwestern Bell in order to lure a customer to CU's fiber-optics network.

A Bell spokesman said CU used its control of public utility poles to learn details of a proposed deal with St. John's Regional Health Center less than two weeks ago. On Monday, the hospital postponed accepting a Bell contract to pursue a CU plan.

CU officials denied having any knowledge that would provide an edge amid growing competition in Springfield's telecommunications market.

But Gannaway, who opposes CU involvement in telecommunications, said the utility had opportunity to take unfair advantages.

"CU has been privy to all these negotiations," Gannaway said. "They knew every detail about it — what Bell was charging. All they had to do was undercut them on the price."

CU Assistant General Manager Gerald Lee and CU board member

Dan Chiles denied the accusation.

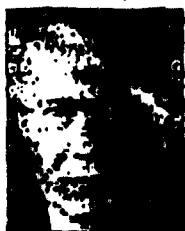
"I'm not privy to any kind of skullduggery or anything underhanded," Chiles said of the negotiations with St. John's. Chiles has been a vocal advocate of CU's venture into the telecommunications business.

But Mark Walker of Southwestern Bell said CU had been involved in a meeting between his company and St. John's staff less than two weeks ago.

Bell's proposal to build a fiber-optics link between St. John's main hospital on East Cherokee Street and an office building on East Portland Street involved running a line over some CU-owned utility poles.

That brought CU operations manager Bill Burks and telecommunica-

mayor says



Gannaway



Chiles

St. John's called Monday to cancel while considering a CU proposal.

"The mere fact they were doing the project is enough to show how you can be dealing with one side of the utility for public access, and to have the other side making their own proposal puts us at a competitive disadvantage," said Walker.

For Walker, the incident bolsters Southwestern Bell's support of a state bill that could prevent utilities from competing in the telecommunications industry.

But CU's Lee said he spoke with Burks Wednesday evening and said Bell's pricing never came up.

tions manager Todd Murren to the table with Bell and St. John's.

St. John's spokesman Mike Peters said the hospital signed a letter of intent to do business with Bell, contingent on receiving a contract.

Walker said Bell had set a meeting Tuesday to present that contract, but

See CU, Page 5A

CU/ St. Louis firm signs deal

Continued from 1A

"We were never aware of what Southwestern Bell was charging," Lee said. "We're not dealing with somebody charging X, so we're charging X-minus. We got a request from St. John's, and what we're charging is based on our costs."

Lee said CU did know what Bell had filed with the Public Service Commission.

"We only knew about Southwestern Bell's billing practices through tariff information they filed, which is public information," he said.

Peters said St. John's was negotiating with Southwestern Bell, CU and at least two other providers.

"We're discussing a variety of options to meet our needs," Peters said. "Nothing has been decided."

The incident is the latest in a controversial stream of events since CU

decided to lease out its fiber-optics network in competition with private companies, launched by the 1996 federal Telecommunications Act.

Telephone companies, led by Southwestern Bell, began fighting against the utilities company.

The city of Springfield next raised the ire of such companies as AT&T and MCI by proposing to charge them for use of the city's public rights of way needed for telecommunications networks.

Gannaway further accused CU of unfairly prolonging negotiations to lease pole space to another telecommunications company, Brooks Fiber, in order to stall potential competition from the St. Louis firm.

"The longer they can keep them out, the more opportunities CU has to lease its fiber," Gannaway said.

Lee said that's not an issue: CU reached a pole-lease agreement with

Brooks Fiber nearly two weeks ago. Mark Ritter, spokesman for Brooks Fiber, confirmed the signing Wednesday afternoon.

Gannaway said that's news to him. The last time he spoke to anyone from CU, about two weeks ago, no agreement had been reached.

"They'd only been negotiating since July," he said.

CU board member Chiles said Bell is the one posing unfair competition, because of a longtime, federally funded monopoly that ended with last year's Telecommunications Act passed by Congress.

"Bell has been using thousands of utility poles for years and paid absolutely nothing," Chiles said.

"It has been around for a hundred years, developing the latest technology, compared to a utility company that has only had a fiber-optics network for two years."